

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHN WILLIAM KADERLY, JR.,	§	
	§	
v.	§	C.A. NO. C-07-233
	§	
NATHANIEL QUARTERMAN.	§	

ORDER DENYING MOTION FOR AN EVIDENTIARY HEARING

Petitioner is an inmate in the Texas Department of Criminal Justice, Correctional Institutions Division, and is currently incarcerated at the Stevenson Unit in Cuero, Texas. Proceeding pro se, he filed a habeas petition pursuant to 28 U.S.C. § 2254. (D.E. 1). Pending is petitioner's motion for an evidentiary hearing. (D.E. 4).


Rule 8(a) of the Rules Governing Section 2254 Cases states that "[i]f the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted." Rule 8(c) further requires that "[t]he judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare." The Fifth Circuit has explained that "[a] hearing in a habeas proceeding is required only when, *inter alia*, the record reveals a genuine factual dispute." Tague v. Puckett, 874 F.2d 1013, 1015 (5th Cir. 1989) (emphasis added); see also Murphy v. Johnson, 205 F.3d 809, 815-16 (5th Cir. 2000) (discussing basis for evidentiary hearing).

Petitioner is challenging his conviction for burglary of a habitation with intent to commit theft by the 117th Judicial District Court in Nueces County, Texas. (D.E. 1, at 2). In the pending motion, he argues for an evidentiary hearing because there is the existence of new

evidence and that there are thirteen points of error making his confinement improper. (D.E. 4, at 1). Respondent has not yet had the opportunity to respond to petitioner's assertions, and nothing presented to date indicates that an evidentiary hearing is warranted.

It is therefore ORDERED that petitioner's motion for an evidentiary hearing, (D.E. 4), be DENIED without prejudice.

ORDERED this 30th day of May 2007.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE